

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1362 OF 2005.
in
SECOND APPEAL NO.310 OF 1993.

Ganesh Raghunath Nazirkar ..Applicant

versus

Tha Panchayat Samiti, Raigad
& Others ..Respondent.

Shri Arjunwadkar for the Applicant

Coram : S.R.Sathe, J.
Dated : 28th Feb., 2006

P.C.

1. Heard Shri Arjunwadkar, learned Advocate for the Applicant and the learned Advocates for the Respondents.

2. Perused the papers.

3. The Applicant is the Trustee Wahitwatdar of Shri Ram Devasthan, Pali. The land bearing Survey No.2, Hissa No.0 situated at Mauje Pali, Saluka Sudhagad is the property of the said trust. According to applicant, the Panchayat Samitis, Raigad made an encroachment on the said land and carried out some construction on the said land. The Applicant, therefore, filed Regular Civil Suit No.93

of 1991 against the Panchayat Samiti, Zilla Parishad Raigad, Collector of Raigad and State of Maharashtra for possession of the encroached land. The defendants therein did not file any written statement. The Trial Court decreed the suit on 10.4.1992 and defendants 1 and 2 were directed to remove the encroachment.

4. The defendants 1 and 2 preferred Regular Civil Appeal 64 of 1992 in the Court of District Judge, Raigad. However, the said appeal was also dismissed. Being aggrieved by the same, the original defendants filed Second Appeal No.310 of 1993.

5. During the pendency of the said appeal the defendants 1 and 2 made a statement that acquisition proceedings are initiated in respect of the encroached land. This Court, therefore, directed the Appellants to deposit Rs.4,00,000/- and the applicant was allowed to withdraw the said amount. Thereafter, by virtue of order dated 5.4.1994 the Special Land Acquisition Officer was directed to complete the acquisition proceeding by 30.4.1994 and it was made clear that in case of default by SLO in that behalf the applicant is entitled for decree

without further order from this Court. Subsequently, by virtue of further direction it was made clear that if the amount of compensation is fixed less than Rs.4,00,000/- then the applicant shall refund the excess amount.

6. From the perusal of the record it appears that the land acquisition proceedings were completed and compensation amount was also determined. Being aggrieved by the said order reference was made to the Court of CJSD, Alibag. The learned Civil Judge, Sr. Division, Alibag, directed the Zilla Parishad to pay compensation of Rs.4,00,000/- for acquiring area of 2164 sq.mts. It was also held that applicant was entitled to interest at the rate of 12%.

7. Being aggrieved by the said order, the respondents filed First Appeal No.1100 of 2001 in this Court. The said appeal was allowed and the order passed by the Civil Judge, Sr. Division, Alibag was set aside and the award passed by the land acquisition officer was confirmed.

8. Now, by the present application, the applicant has prayed to reinstitute enquiry or

appoint commission to search the truth. The main grievance of the applicant is that the land acquired is bearing Gut No.123 of Pali. However, the suit land bearing Survey No.2 is not the land which is acquired by the Respondents. According to him there is nothing on record to establish that the land bearing Survey No.2 is converted into Gut No.123 or Gut NO 123 is formed out of same portion of land bearing Survey No.2. Besides this it is the say of the applicant that the entire portion of the suit land i.e. the land described in Original Civil Suit No.93 of 1991 has not been acquired. If it is so, and some portion of land is left out, then the applicant cant make any grievance. On the contrary, he should be happy about it that the entire land is not acquired. If it is the grievance of the applicant that the total construction of the respondents is standing on the land which is more than the acquired land then also relying on the decree passed in S.A.No.310 of 1993 he may, if so advised initiate execution proceeding. However, once the Second Appeal 310 of 1993 and the First Appeal 1108 of 2001 are finally disposed of by this Court, no further application of this nature is maintainable. The application itself is misconceived and as such liable to be dismissed.

9. It must also be noted that if the applicant is having any grievance in respect of the acquisition proceeding then also the same can not be agitated now before this Court by filing the present application. So, looking to the application from any angle it is very clear that the relief claimed by the applicant in this application is misconceived. Hence the application is dismissed.

(S.R.Sathe, J.)